

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CASE NO. 3:06-cr-204-MEF
)	(WO)
HENRY ERIK YAPIAS)	

ORDER

On November 21, 2006, the defendant filed a Motion to Continue (Doc. #19). While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985), the court is, of course, limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Speedy Trial Act provides generally that the trial of a defendant in a criminal case shall commence within 70 days of the latter of the filing date of the indictment or the date the defendant appeared before a judicial officer in such matter. 18 U.S.C. §3161(c)(1). *See United States v. Vasser*, 916 F.2d 624 (11th Cir. 1990).

The Act excludes from this 70 day period any continuance that the judge grants "on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(8)(A).

The motion states that counsel for defendant filed a notice of appearance in this case on November 21, 2006. Counsel was advised that the matter had gone before the court for a change of plea. However, a conflict of interest was discovered before said plea was entered and previous counsel, Jennifer Hart, was required to withdraw. Defense counsel has

previously set professional obligations on November 27, 2006 and November 29, 2006 and a continuance is necessary. Consequently, the court concludes that a continuance of this case is warranted and that the ends of justice served by continuing this case outweighs the best interest of the public and the defendant in a speedy trial. *See United States v. Davenport*, 935 F.2d 1223, 1235 (11th Cir. 1991)(reasonable time necessary for effective preparation is a significant factor for granting a continuance under the Speedy Trial Act).

Accordingly, it is hereby ORDERED:

1. That the defendant's motion filed on November 21, 2006 is GRANTED;
2. That the trial of this defendant is continued from the November 27, 2006 trial term to the February 5, 2007 trial term.

DONE this the 21st day of November, 2006.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE